

**BARRY SCHWARTZ**  
Claimant

**HAINES CONSTRUCTION COMPANY, INC.**  
Respondent

**GALLAGHER BASSETT SERVICES, INC.**  
Insurance Carrier

[illegible]

## ORDER

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

Claimant testified he immediately told Mr. Davis that he had suffered a pain in his hip while crossing over the pipe. Claimant also stated that later, while riding in the truck with Mr. Davis, he again mentioned the hip pain.

Mr. Davis testified in this matter at preliminary hearing. He denied ever being advised by claimant at any time that he suffered any kind of back or hip injury.

Mr. Davis was aware of an eye injury claimant suffered as a result of a welding burn on November 2, 2000. Claimant apparently failed to advise respondent of that particular injury, going directly to the emergency room by himself.

Claimant was reprimanded several days later by David Kelly Overby, the safety manager for respondent. At that time, it was reemphasized that claimant was to advise Mr. Overby or one of the two foremen, either Joe Thompson or Stan Campbell, if he suffered any type of an injury.

Claimant acknowledged after the November 20, 2000, alleged injury that he discussed the alleged injury with Mr. Davis only. Even though he at various times was in the vicinity of Mr. Overby, Mr. Thompson and Mr. Campbell, he at no time talked to any of them about the November 20 alleged injury.

Additionally, claimant failed to seek medical treatment for this injury at any time while employed with respondent. Claimant's last day of work with respondent was December 12, 2000, when the job ended. Claimant neither requested nor sought any treatment through his last day worked. The first time claimant sought medical treatment was with Alexander F. Frank, M.D., of the United States Air Force. Dr. Frank provided claimant treatment, as claimant's wife is a member of the United States Air Force. When claimant first saw Dr. Frank on December 19, 2000, Dr. Frank's medical report stated that claimant had suffered an injury secondary to "slipping on fluid on the ground." There was no mention at that time of any work-related injury or any injury occurring while crossing a pipe.

In workers compensation litigation, it is claimant's burden to prove his entitlement to benefits by a preponderance of the credible evidence. See K.S.A. 44-501 and K.S.A. 44-508(g).

Here, claimant alleges accidental injury on November 20, 2000, but failed to seek treatment for almost a month.

He testified that he told his welding partner, Mr. Davis, of the injury but, even though he was in the vicinity of the safety manager and two foremen, he failed to advise any of those three of the alleged injury. Mr. Davis denied any knowledge of claimant's alleged hip or back injury. He testified claimant never told him of an injury. He further testified that claimant at no time after November 20 requested medical treatment, acted as though he needed medical treatment or gave any indication he was suffering any type of pain complaints from the alleged injury.

K.S.A. 44-520 requires claimant to notify respondent of the accident within 10 days. In this instance, claimant alleges a specific traumatic incident on November 20. The

Appeals Board finds claimant failed to advise respondent within 10 days of the date of accident of the particulars of the alleged accident.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Jon L. Frobish dated April 30, 2001, should be, and is hereby, affirmed, and claimant, Barry Schwartz, is denied benefits against respondent, Haines Construction Company, Inc., and its insurance carrier, Gallagher Bassett Services, Inc., for the injury on November 20, 2000, for having failed to provide timely notice of accident.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of August 2001.

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BOARD MEMBER

c: Roger A. Riedmiller, Wichita, KS  
David P. Mosh, Kansas City, MO  
Jon L. Frobish, Administrative Law Judge  
Philip S. Harness, Director